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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KIM GUILLORY and SHARON
TESLER

Plaintiffs,

VS.

UNITED AIRLINES, INC., a Delaware corporation, and DOES 1-50,

Defendants.

CASE NO. 4:20-cv-7199 JST

JOINT CASE MANAGEMENT STATEMENT

[Fed. R. Civ. P. 26(f) and L.R. 16-9]

Date: February 2, 2020

Time: 2:00 p.m.

Location: Courtroom 6,
1301 Clay Street
Oakland, CA 94612

Judge: Hon. Jon S. Tigar

Plaintiffs Kim Guillory and Sharon Tesler (“Plaintiffs”) and Defendant United Airlines, Inc. (“United”) (collectively, the “Parties”) submit the following report on their early meeting of counsel pursuant to Federal Rule of Civil Procedure 26(f), Local Rule 16-9, the Court’s Order Standing Order for All Judges of the Northern District Court: Contents of Joint Case Management Statement, and this Court’s Standing Order for All Civil Cases Before District Judge Jon S. Tigar.

Counsel for the Parties submitting this Joint Statement conducted their Rule 26 early meeting by telephone on December 10, 2020.

Counsel for Plaintiffs Kim Guillory and Sharon Tesler:

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22 **A. JURISDICTION AND SERVICE**

23 The case was initially filed in State Court, but United removed the action based
24 on diversity jurisdiction (28 U.S.C. § 1332) and Plaintiffs did not file a motion to
25 remand. As pled, the matter in controversy exceeds the sum or value of \$75,000.
26 United has been served and filed an answer. As noted in United's answer, United
27 believes that Plaintiffs' claims may be preempted, in whole or in part, based on the
28 Railway Labor Act ("RLA").

1 **B. FACTS**

2 **Plaintiff's Statement:**

3 This is a case brought under the California Fair Employment and Housing Act
4 (“FEHA”), which was initially brought in San Mateo County Superior Court, and
5 removed to the Northern District of California. Plaintiffs Kim Guillory and Sharon
6 Tesler (“Plaintiffs”) are flight attendants for United Airlines, Inc. (“United”), who have
7 been employed since 1992 and 1986, respectively. Plaintiff Ms. Guillory is Black and
8 over the age of 39, and Plaintiff Ms. Tesler is Jewish and over the age of 39. United
9 merged with Continental Airlines beginning in October 2010, a gradual process which
10 occurred over many years. The flight attendants of the two companies eventually
11 merged/integrated in 2018. At all relevant times, United has offered “charter flights”
12 to various customers. Through the charter flights program, a customer can hire a plane
13 on a one-time basis (also known as “ad hoc”), or can establish an account for regular
14 charter transportation. Typical customers of the charter program include, but are not
15 limited to, large corporations desiring to transport groups of executives, and sports
16 teams and franchises (both professional and college teams). Charter flights are also
17 used by the United States military to supplement military transportation.

18 The charter program is an established and administered program at United, with
19 dedicated personnel and management, including what are called “Inflight Charter
20 Coordinators,” a role performed by individual flight attendants. Flight attendants are
21 also necessary to staff the charter flights, to serve the customers participating in the
22 charter program. Plaintiffs allege that the selection of and assignment of flight
23 attendants to act as Inflight Charter Coordinators and to staff these charter flights as
24 flight attendants is being performed in a discriminatory manner, in violation of
25 California law. United was repeatedly advised – by Plaintiffs and, on information and
26 belief, other flight attendants – that the selection procedures were in violation of
27 FEHA. Specifically, Plaintiffs allege that the selection and assignment of personnel
28 for the charter flights is and continues to be unlawfully based on race and age, and that

1 the positions are only open to personnel who fit a specific visual image, which is
2 mostly young, white, female, and blond. Plaintiffs also allege that they have been
3 retaliated and harassed for speaking out against the discrimination and unfair selection
4 process in the charter program, and based on other facts specific to their individual
5 employment. Plaintiffs allege the following causes of action: (1) Discrimination in
6 Violation of FEHA - Race; (2) Discrimination in Violation of FEHA – Age; (3) Racial
7 Harassment in Violation of FEHA; (4) Retaliation in Violation of FEHA; and (5)
8 Failure to Prevent Discrimination and Harassment in Violation of FEHA. Plaintiffs
9 seek statutory damages under FEHA.

10 **United's Statement:**

11 United denies Plaintiffs' allegations, asserts numerous affirmative defenses,
12 and disputes liability as well as damages.

13 Plaintiffs are currently employed by United as flight attendants and have
14 previously been staffed on charter flights. United promptly and thoroughly
15 investigated Plaintiffs' complaints regarding the charter program. As part of its
16 investigation, United reviewed the demographic data for the flight attendants staffed
17 on charter flights and determined that charter flight attendants represent a diverse range
18 of ages, genders, races, and other demographics.

19 United's investigation into Plaintiffs' claims also revealed that Plaintiffs'
20 concerns are based on their fundamental misunderstanding of how United conducts its
21 charter flight staffing and that no discrimination has occurred in the selection of flight
22 attendants for charter flights. Per the collective bargaining agreement, charter clients
23 can request that specific flight attendants be assigned to their flights based on their
24 positive experience with the flight attendants. These flight attendants are then placed
25 on a designated list for the particular charter client that is used to staff flight attendants
26 on the client's charter flights. Consistent with United's EEO and anti-discrimination
27

1 policies, neither United nor its charter clients are not permitted to discriminate in the
2 creation or use of the designated charter lists.

3 With respect to the charter flights that Plaintiffs alleged involved discriminatory
4 staffing, the selection of the crew members was consistent with the charter clients'
5 designated lists, which were created and used in a non-discriminatory manner and in
6 accordance with United's EEO and anti-discrimination policies.

7 Finally, United did not retaliate against Plaintiffs for voicing their concerns.
8 Rather, United thanked Plaintiffs for raising their concerns and committed to striving
9 to improve the transparency of the charter staffing process.

10 **LEGAL ISSUES**

11 **Plaintiff's Statement:**

12 (1) Did United cause and/or permit personnel to be selected for charter program
13 positions (flight attendants and/or Inflight Coordinators) to be based on age
14 and/or race, in violation of FEHA?

15 (2) Did United cause or permit a racially hostile and harassing work
16 environment for Plaintiffs, in violation of FEHA, by failing to permit
17 Plaintiffs to apply for positions that are made available only to white
18 employees; failing to support Plaintiffs when subjected to racial
19 discrimination and harassment by other employees; and/or imposing
20 meritless discipline upon Plaintiff Guillory, including an involuntary
21 suspension?

22 (3) Did United retaliate against Plaintiffs when they complained about
23 discrimination, in violation of FEHA?

24 (4) Did United fail to prevent discrimination and harassment allegedly suffered
25 by Plaintiffs, in violation of FEHA?

1 (5) Are Plaintiffs entitled to statutory relief, including damages, punitive
2 damages, and attorneys' fees and costs, if they prevail?

3 **United's Statement:**

4 (6) Are Plaintiffs' causes of action are barred, in whole or in part, by United's
5 affirmative or other defenses, including preemption under the RLA?

6 **C. MOTIONS**

7 Plaintiffs do not anticipate filing any motions unless there are discovery issues.
8 United anticipates filing a motion for summary judgment.

9 **D. AMENDMENT OF PLEADINGS**

10 At this juncture, the Parties do not contemplate making any amendments to the
11 pleadings.

12 **E. EVIDENCE PRESERVATION**

13 The Parties have reviewed the Guidelines Relating to the Discovery of
14 Electronically Stored Information ("ESI Guidelines"), and have met and conferred
15 pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to
16 preserve evidence relevant to the issues reasonably evident in this action.

17 **F. DISCLOSURES**

18 The Parties provided timely initial disclosures on December 14, 2020 pursuant
19 to General Order 71. Plaintiffs contend that United's initial disclosures and its
20 document production were incomplete. Likewise, United contends that Plaintiffs'
21 initial disclosures and document production are incomplete. The Parties are meeting
22 and conferring regarding their initial disclosures.

23 **G. DISCOVERY**

24 The Parties exchanged document productions pursuant to their GO 71 initial
25 disclosures on December 14, 2020. Plaintiffs have indicated they will serve subpoenas

1 requesting documents pursuant to Fed. R. Civ. P. 45 to a number of third party
 2 witnesses who are customers of the charter program. United has requested that before
 3 serving potentially unduly burdensome and harmful subpoenas on United's customers,
 4 Plaintiffs give United the opportunity to provide such information/documents to
 5 mitigate any unnecessary harm.

6 **1. Initial Disclosures.** Pursuant to General Order 71, the Parties exchanged
 7 initial disclosures on December 14, 2020.

8 **2. Written discovery.** Currently, the Parties do not anticipate seeking more
 9 than the following standard limits on written discovery:

- 10 • 25 Interrogatories.
- 11 • 25 Requests for Admission.
- 12 • No current limit for reasonably particular requests for production of
- 13 documents.
- 14 • 10 depositions per side.

15 **3. Electronically-Stored Information.** The Parties agree that
 16 electronically stored information will normally be produced in PDF format. Native
 17 electronic format may be used if reasonably required.

18 **4. Protection of Discovery Materials.** The Parties negotiated a protective
 19 order for confidential or privileged discovery materials, which has been entered by the
 20 Court. DE 16.

21 **H. CLASS ACTIONS AND RELATED CASES**

22 This is not a class action, and there are no related cases.

23 **I. RELIEF**

24 Plaintiffs seek (1) compensatory damages in an amount according to proof; (2)
 25 damages for emotional distress; (3) punitive damages; (4) reasonable attorneys' fees
 26 and costs of suit. United denies that Plaintiffs are entitled to any relief. To the extent
 27

1 United prevails in its defense against Plaintiffs' claims, it reserves the right to seek the
 2 recovery of its reasonable attorneys' fees and costs.

3 **J. SETTLEMENT AND ADR**

4 The Parties have agreed to a private mediation with Hon. Jamie Jacobs-May
 5 (Ret.) on March 11, 2021. Plaintiffs have not provided a settlement demand, but have
 6 agreed to do so prior to mediation. To date, no settlement discussions have taken place
 7 to date.

8 **K. CONSENT TO MAGISTRATE; OTHER REFERENCES**

9 Plaintiffs did not consent to proceeding before a magistrate judge and timely
 10 notified the Court of the same. There are no other references that are appropriate.

11 **L. NARROWING OF ISSUES**

12 The Parties agree to stipulate facts before trial and to bifurcate the issue of
 13 punitive damages.

14 **M. EXPEDITED TRIAL PROCEDURES**

15 This case cannot be handled under the Expedited Trial Procedure of General
 16 Order No. 64 Attachment A.

17 **N. SCHEDULING**

20 Event	21 Plaintiff Proposed Date(s)	22 United Proposed Date(s)
23 Last day to amend pleadings or add parties	24 April 30, 2021	February 16, 2021
25 Fact Discovery cut-off	26 December 5, 2021	December 5, 2021
27 Expert Disclosure	28 December 15, 2021	March 5, 2022
28 Expert Disclosure (rebuttal)	29 January 14, 2022	March 19, 2022

1	Expert Discovery Cutoff	February 11, 2022	April 18, 2022
2	Last day for filing <i>Daubert</i> motions		May 9, 2022
3	Last day for hearing dispositive motions, excluding <i>Daubert</i> motions	March 2, 2022	February 5, 2022
4	Last day to conduct ADR proceedings	March 31, 2022	May 7, 2022
5	Last day to file Joint Pretrial Statement	June 3, 2022	June 3, 2022
6	Final Pretrial Conference	June 10, 2022	June 10, 2022
7	Jury Trial (in person)	June 27, 2022	June 27, 2022

14 O. TRIAL

15 P. The case will be tried to a jury; Plaintiffs anticipate 10-12 days for trial,
 16 and Defendant anticipates 7-10 days for trial. **DISCLOSURE OF NON-**
 17 **PARTY INTERESTED ENTITIES**

18 The parties have filed their respective Disclosures of Non-Party Interested
 19 Entities. DE 2, DE 17.

21 Q. PROFESSIONAL CONDUCT

23 All attorneys of record have reviewed the Guidelines for Professional Conduct
 24 for the Northern District of California.

1 Respectfully submitted,

2 Dated: January 26, 2021

**THE LAW OFFICES OF JOSEPH L. ALIOTO
AND ANGELA ALIOTO**

5 */s/ Jordanna G. Thigpen (w/ permission)*

6 Jordanna G. Thigpen

7 *Attorneys for Plaintiffs*

8 Dated: January 26, 2021

REED SMITH LLP

9 */s/ Michele Haydel Gehrke* _____

10 Michele Haydel Gehrke

11 *Attorneys for United Airlines, Inc.*

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14 **ATTESTATION RE: ECF FILING**

15 I declare under penalty of perjury on this 26th day of January at San Francisco,
16 California that all other signatories listed on whose behalf this electronic filing is
17 submitted concur in the filing's content and have authorized the filing.

18

19 */s/ Michele Haydel Gehrke*

20 Michele Haydel Gehrke

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